

EXHIBIT C

Amended Complaint

Barry v. Posi-Seal, International,

No. 513813 (Conn. Super. Ct., Judicial
District of New London, May 25, 1990)

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No. 513813

JAMES G. BARRY : SUPERIOR COURT
VS. : J.D. OF NEW LONDON
POSI-SEAL INTERNATIONAL, INC. : MAY 25, 1990

AMENDED COMPLAINT

COUNT ONE: (Breach of Contract)

1. Plaintiff, James G. Barry, is and at all times relevant hereto, has been a resident of the Town of Westerly, County of Washington, State of Rhode Island.

2. The defendant, Posi-Seal International, Inc. (hereinafter "Posi-Seal"), is and at all times relevant hereto, was a corporation organized and existing under and by virtue of the laws of the State of Connecticut, qualified to do business in Connecticut, with its principal place of business located in the Town of North Stonington, County of New London and State of Connecticut.

3. On or about October 24, 1977, the defendant hired the plaintiff as an assembler/tester.

4. On or about August 5, 1988, in spite of satisfactory job performance, the defendant wrongfully fired the plaintiff.

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SUPERIOR COURT
NEW LONDON COUNTY

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5. During the entire course of the plaintiff's employment with the defendant, there existed an express and implied-in-fact employment agreement between the plaintiff and the defendant, which at the time of the plaintiff's discharge included, but was not limited to, the following terms and conditions:

- a. That the plaintiff would be able to continue his employment with the defendant indefinitely, so long as he carried out his duties in a proper and competent manner;
- b. That the plaintiff would not be demoted, discharged or otherwise disciplined for other than good cause with notice thereof;
- c. That the relationship between the plaintiff and the defendant company would be governed by the concept of "good faith and fair dealing;"
- d. That the defendant would not evaluate the plaintiff's performance in an arbitrary, untrue or capricious manner;
- e. That if grievances or complaints were lodged regarding the plaintiff's performance, he would be given written notice and a meaningful opportunity to respond and/or to improve.
- f. That prior to the termination of the plaintiff, the defendant company would utilize a system of "progressive discipline" providing counseling, oral and written reprimands, and suspension;
- g. That termination would occur only if the plaintiff's supervisor suspended the plaintiff and recommended termination and only after a complete investigation of the situation, including attempts to discover unknown causes of the termination and misunderstandings between the parties, was conducted by the defendant's Personnel Department.

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6. This total employment agreement was evidenced by various written documents, oral representations to plaintiff by defendant's agents and employees, and the parties' entire course of conduct, including, but not limited to, the following:

a. The defendant's written personnel policies and discipline procedures;

b. An established policy within the defendant's company known to the plaintiff and relied upon by plaintiff, that an employee such as the plaintiff, who had performed services as a good and faithful employee, would have secure employment tenure with the defendant; that an employee such as the plaintiff would be permitted to continue employment unless discharged for good and sufficient cause; that an employee such as the plaintiff, with a grievance or complaint lodged against him, would be provided with a meaningful opportunity to respond to such grievance or complaint and/or to improve his performance; that the defendant would not demote, discharge or discipline an employee such as the plaintiff without good and sufficient cause, and would not otherwise have his job functions taken away or reassigned;

c. Oral representations were made to the plaintiff that he would have a job with the defendant so long as his performance was satisfactory;

d. Oral representations were made to the plaintiff that he was doing a satisfactory job.

The plaintiff, in good faith, relied upon these representations and believed them to be true.

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7. The plaintiff's reliance and belief in and acceptance in good faith of all the assurances, promises and representations as listed in Paragraph 6 above, lead the plaintiff, throughout his employment with the defendant, to reasonably believe that his employment was secure and that there existed a contract of continuous employment with the defendant, Posi-Seal International, Inc..

As independent consideration for this contract of continuing employment, and as evidence of the plaintiff's reliance thereon, in addition to performing his regular duties as an employee of the defendant, the plaintiff refrained from seeking other employment and from time to time, turned down, gave up, and refrained from pursuing other career opportunities.

8. The plaintiff undertook and continued employment and duly performed all the conditions of the agreement to be performed by him.

9. The plaintiff has at all times been ready, willing, and able to perform, and has offered to perform, all the conditions of this agreement to be performed by him as evidenced by the following:

a. That on January 15, 1979, the defendant gave the plaintiff a salary increment based upon promotions;

b. That again on April 23, 1979, the defendant gave the plaintiff another salary rate increase due to promotion;

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c. That on September 10, 1979, the defendant awarded the plaintiff a salary increase based on merit;

d. That during the period from January 1, 1980 to November 23, 1987, the defendant awarded the plaintiff several increases in salary due to annual pay rate changes and grade changes;

e. That the plaintiff was at all relevant times a competent employee with an unblemished performance record;

f. That the plaintiff thoroughly applied himself to his employment, was quick to understand and learn new tasks, was thorough and hard working, and constantly and eagerly strove to achieve new positions within the company, and as such, considered himself to be a vital and valued employee of the defendant.

10. Despite the defendant's representations to the plaintiff, and the reliances that the plaintiff placed on them, the defendant denied the plaintiff a meaningful opportunity to respond to grievances filed against him.

11. The defendant breached the aforementioned total employment agreement by denying the plaintiff an opportunity to respond to grievances.

12. The defendant breached the aforementioned total employment agreement by discharging the plaintiff without regard to or in compliance with the requirements of the aforesaid agreement.

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13. As a proximate result of the defendant's breach of the total employment agreement, the plaintiff has suffered, and continues to suffer, substantial losses incurred in seeking and performing substitute employment and in earnings, bonuses, deferred compensation, and other employment benefits which he would have received had the defendant not breached said agreement all to his damage.

SECOND COUNT: (Tortious Breach of Good Faith and Fair Dealing)

1. Paragraphs 1 through 12 of the First Count are hereby incorporated and made Paragraphs 1 through 12 of the Second Count.

13. The aforesaid employment agreement contained an implied covenant of good faith and fair dealing by which the defendant promised to give full cooperation to the plaintiff with respect to his performance under said employment agreement and to refrain from doing any act which would prevent or impede the plaintiff from performing all the conditions of the agreement to be performed by him, or any act that would prevent or impede the plaintiff's enjoyment of the fruits of said agreement. Specifically, said covenant of good faith and fair dealing required the defendant to fairly, honestly, and reasonably perform the terms and conditions of the agreement.

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14. The defendant breached this covenant with regard to the plaintiff through, but not limited to, its conduct in:

- a. Subjecting the plaintiff to differential standards of conduct from other employees;
- b. Denying the plaintiff the opportunity to respond to grievances filed against him;
- c. Failing to conform to the existing rules of personnel procedure afforded to the plaintiff;
- d. Failing to make a reasonable and careful investigation of the accusations against the plaintiff;
- e. Terminating the plaintiff's employment without cause and for reasons that have nothing to do with legitimate business justification.

15. As a result of the defendant's violations of said implied covenant of good faith and fair dealing, the plaintiff has suffered harm, including, but not limited to:

- a. The destruction of the plaintiff's valuable property interests, i.e., his prospect of continuing future employment with the defendant and receipt of continued compensation.
- b. Impairment and damage to the plaintiff's good name by causing him to be disciplined and discharged with the untrue implication to all future prospective employers that he had been disciplined or discharged for dishonesty, incompetence or unsatisfactory performance. Said implication was, and is, untrue and totally without foundation.

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16. As a proximate result of the defendant's actions, the plaintiff has suffered, and continues to suffer, substantial losses incurred in seeking and performing substitute employment and in earnings, bonuses, deferred compensation, and other employment benefits.

17. As a proximate result of the defendant's actions, the plaintiff has suffered, and continues to suffer, embarrassment, humiliation and anguish.

18. The defendant committed the acts alleged herein maliciously, fraudently and oppressively with the wrongful intention of injuring the plaintiff.

19. The defendant committed the acts alleged herein with an improper and evil motive amounting to malice and in conscious disregard of the plaintiff's rights. Thus, the plaintiff is entitled to recover punitive damages from the defendant.

THIRD COUNT: (Intentional Infliction of Emotional Distress)

1. Paragraphs 1 through 12 of the First Count and Paragraph 14 through 18 of the Second Count are hereby incorporated and made Paragraphs 1 through 17 of the Third Count.

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18. The defendant's actions were extreme and outrageous and/or made with the intention of causing emotional distress.

19. The Defendant intended to inflict emotional distress or knew or should have realized that its conduct involved an unreasonable risk of causing emotional distress and that such acts would result in illness or bodily harm.

20. The foregoing conduct did in fact cause the plaintiff to suffer severe emotional distress. As a proximate result of said conduct, the plaintiff has suffered, and continues to suffer, pain, discomfort, anxiety, humiliation, and emotional distress, and will continue to suffer said emotional distress in the future.

FOURTH COUNT: (Negligent Misrepresentation)

1. Paragraphs 1 through 12 of the First Count, are hereby incorporated and made Paragraphs 1 through 12 of the Fourth Count.

13. By the above described acts incorporated herein, the defendant clearly represented to the plaintiff that he would not be terminated as an employee of the defendant as long as his work performance was satisfactory.

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14. The defendant made said representations for the purpose of inducing the plaintiff to enter into an employment contract with the defendant, and thereafter for the purpose of inducing the plaintiff to continue performing said employment.

15. The defendant should have known that the plaintiff justifiably believed and relied upon said representations, and was thereby induced to give up his prior employment to work for the defendant, to continue to work with the defendant, and to give up, to turn down, and to refrain from seeking other and more secure employment opportunities.

16 The plaintiff detrimentally relied upon said representations.

17. As a proximate result of the defendant's representations to the plaintiff as aforesaid, the plaintiff has suffered, and continues to suffer, substantial losses incurred in seeking and performing substitute employment and in earnings, bonuses, deferred compensation, and other employment benefits.

18. As a proximate result of the defendant's actions, the plaintiff has suffered, and continues to suffer, embarrassment, humiliation and anguish.

WHEREFORE, the plaintiff requests relief as follows:

1. Monetary damages;
2. Compensatory damages;

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3. Interest on the amount of losses in earnings, deferred compensation and other employee benefits at the prevailing legal rate;
4. Reinstatement;
5. Punitive damages;
6. Costs of suit; and
7. Other and further relief as the Court may deem proper.

THE PLAINTIFF

BY: Harry E. Calmar
Harry E. Calmar
Suisman, Shapiro, Wool,
Brennan & Gray, P.C.
His Attorneys

Service is hereby certified to Attorney Clinton Wright,
900 Chapel Street, New Haven, CT 06510.

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